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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/007,869	11/08/2001	Stewart Paton Granger	J6666(C)	6511

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UNILEVER INTELLECTUAL PROPERTY GROUP
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EXAMINER

COTTON, ABIGAIL MANDA

ART UNIT	PAPER NUMBER
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1617

MAIL DATE	DELIVERY MODE
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06/27/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	10/007,869	GRANGER ET AL.	
	Examiner	Art Unit	
	Abigail M. Cotton	1617	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 21 June 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 21 June 2007. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see continuation sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s) _____.
13. ☐ Other: _____.


SREENI PADMANABHAN
SUPERVISORY PATENT EXAMINER

Art Unit: 1617

Continuation sheet (note # 11)

Applicants' arguments regarding the rejections of the claims have been fully considered but have not been found persuasive.

In particular, Applicants argue that claims 1-2, 4-7, 9-12 and 14-18 are fully supported under the 35 U.S.C. 112, first paragraph, written description requirement because page 36 of the specification characterizes the first and second compositions as being compositions that may be used alone, simultaneously or in consecutive order, and thus it is clear that the compositions are not in contact when being stored in the compartments (see page 3 of Remarks submitted June 21, 2007.) The Examiner respectfully disagrees and notes the specification discloses, for example, that the compositions can be provided in a dual compartment package, such as a single bottle/jar with a division separating an interior into first and second compartments, so the compositions are retained separately (see page 30, lines 15-23, in particular), but is silent as to whether the first and second compositions come into contact in the package, or whether such contact does or does not occur during storage, as recited in the claims. Accordingly, as the specification as originally filed does not provide support for claims 1, 6 and 11 as amended, the claims are deemed to add impermissible new matter. Appropriate correction is required. Claims 2, 4-5, 7, 9, 12 and 14-18 are rejected as being dependent upon indefinite claims.

Applicants further argue that the claims are patentable over U.S. Patent No. 5,914,116 in view of 5,965,518 and further in view of 5,976,555, because Applicants assert that the references do not render it obvious to provide a compartment that keeps retinoid containing compositions out of contact with oxygen (see page 5 of Remarks submitted June 21, 2007.) The Examiner respectfully disagrees, and notes that it is considered that one of ordinary skill in the art at the time the invention was made would have found it obvious to modify the two compartment product teachings of Soares et al. to provide a compartment made of aluminum for the retinoid composition that keeps the retinoid out of contact with oxygen, because Soares et al. teaches the desirability of providing the two-compartment product to maximize the effectiveness of the separate compositions, and teaches providing retinoids in one of the compositions, while Liu et al. teaches that it is known that retinoids such as those taught by Suarez et al. can easily oxidize and lose their effectiveness, and that such oxidation can be reduced by providing aluminum containers. Thus, it is considered that one of ordinary skill in the art would have been motivated to provide the aluminum compartment to store the retinoid composition in the product of Soares et al, with the expectation of improving the effectiveness of the retinoid composition.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Abigail M. Cotton whose telephone number is (571) 272-8779. The examiner can normally be reached on 9:30-6:00, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan can be reached on (571) 272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AMC